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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 572

SAMUEL M. FELDSTEIN and WARREN S. SELF
t/a MANNING SIGN EQUITY COMPANY

Appellants

vs.

REAL ESTATE COMMISSION OF MARYLAND
ALLEN SOLOMAN and [illegible]

Appellees

SAMUEL M. FELDSTEIN and WARREN S. SELF
t/a MANNING SIGN EQUITY COMPANY

Appellants

vs.

REAL ESTATE COMMISSION OF MARYLAND
ALLEN SOLOMAN and [illegible]

Appellees

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 852

MANUEL M. BERNSTEIN AND WARREN S. SHAW, T A MANNING SHAW REALTY COMPANY,

Appellants,

v.

REAL ESTATE COMMISSION OF MARYLAND AND ALLEN KLEIMAN AND JEANETTE KLEIMAN, HIS WIFE, AND BERNARD CHERRY AND DORA CHERRY, HIS WIFE,

Appellees.

MANUEL M. BERNSTEIN AND WARREN S. SHAW, T A MANNING SHAW REALTY COMPANY,

Appellants,

VS.

REAL ESTATE COMMISSION OF MARYLAND AND ALLENDALE-LYNDHURST IMPROVEMENT ASSOCIATION, INC.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss or affirm on the following grounds:

(a) The Federal question sought to be reviewed was not properly raised before or expressly passed upon by the Court of Appeals of Maryland;

(b) This appeal is not within the jurisdiction of this Court because it has not been taken in conformity to statute;

(c) This appeal does not present the question sought to be reviewed, or any substantial Federal question.

STATEMENT

This is an appeal from a decision of the Court of Appeals of Maryland affirming two Orders of the Baltimore City Court, (Reuben Oppenheimer, Judge). The opinion is reported in Md. , 156 A. 2d 653. The case arose out of two complaints filed with the Real Estate Commission of Maryland (hereinafter referred to as the "Commission"), and the two cases are now consolidated in one record. The first complaint was filed with the Commission pursuant to the provisions of Article 56, Section 224(a), Annotated Code of Maryland (1957 Ed.), on September 5, 1958, by two owners of property in the 3800 block Grantley Road, Baltimore, Maryland. It claimed in essence that the placing of a "SOLD" sign on the property, known as 3800 Grantley Road, by the Appellants, licensed real estate brokers, in the latter part of June, 1958, and the maintaining of said sign through the summer of 1958, when the property was never actually sold, constituted a violation of certain provisions of Article 56, Section 224, *supra*. A detailed answer was filed by the Appellants on September 29, 1958 denying the essential allegations of the complaint and affirmatively stating that a contract of sale for the property known as 3800 Grantley Road had been entered into by the owner of the property with one, Joseph Carter and wife, and further asserting that settlement for the property had not

yet taken place. The Commission held extensive hearings on the issues presented and, by its Order dated April 21, 1959, found that the Appellants had engaged in a continued and flagrant course of misrepresentation in violation of Article 56, Section 224(b), *supra*, that the Appellants also engaged in misleading and untruthful advertising prohibited by Section 224(j), *supra*, and that the Appellants' conduct constituted and demonstrated bad faith and improper dealings in violation of Section 224(s) *supra*.

The second proceeding arose out of a complaint filed with the Commission on October 9, 1958, by the Allendale-Lyndhurst Improvement Association, Inc. claiming the use of an illegal form of listing agreement by the Appellants. An answer was filed by the Appellants and the Commission on its own motion decided to investigate and determine the issues presented. After hearing testimony on February 25, 1959, the Commission by its order dated April 21, 1959, found that Appellants had violated Section 224(o) Article 56 by knowingly permitting the use of a listing agreement without providing for "a definite termination date without notice from either party".

In each case the Commission suspended the broker's or associate broker's license of the Appellants for a period of three months, the suspensions to run concurrently.

Petitions to review the actions of the Commission were brought by the Appellants under the Maryland Administrative Procedure Act (Article 41, Sections 244-246, Annotated Code of Maryland, 1957 Ed.). Judge Oppenheimer, after a complete review of the proceedings, by his written opinion dated June 4, 1959, found that the orders of the Commission were supported by competent and substantial evidence and, therefore, sustained them. From these findings and subsequent formal orders an appeal was taken to

the Court of Appeals of Maryland. During the pendency of the court review of the Commission's orders, the suspension of Appellants' licenses has been stayed.

On the appeal to the Court of Appeals of Maryland, the question presented was whether there was sufficient evidence to sustain the orders of the Real Estate Commission of Maryland. The Court of Appeals, by its Opinion dated December 18, 1959, found that there was competent, material and substantial evidence to support the Commission's findings of fact and conclusions of law, and therefore it affirmed the Orders of the Commission and the Order of the Baltimore City Court.

ARGUMENT

I.

The Federal Question Sought To Be Reviewed Was Not Properly Raised And Preserved Below.

The Appellants did not raise in their brief, reply brief, or in oral argument in the Court of Appeals of Maryland the issues now sought to be raised by their Jurisdictional Statement. The Opinion of the Court of Appeals expressly states that the questions now presented to this Court were not before that court and therefore not considered by it. (Jurisdictional Statement, Appendix B, pp. 15, 17, 18).

After the decision, the Appellants filed a motion for reargument in the Court of Appeals, referring to the language of the Court's Opinion and stating "that in view of the aforegoing, it is clear that this Court (Court of Appeals of Maryland) did not think it necessary to decide the question of Federal Constitutional Law raised by your petitioners in the hearing before the Real Estate Commission of Maryland, and on appeal to the Baltimore City Court" (Appellants' Motion for Reargument in the Court of Ap-

peals of Maryland, par. 4); and "that for reasons not known to your petitioners or to their present counsel, former counsel namely, J. Calvin Carney, Esq., who in fact appears as counsel on the Jurisdictional Statement in this Court did not include in their brief your petitioners' contention in the Court below and before the Commission that the proceeding was a conspiracy to deprive your petitioners and their Negro customers of their constitutional rights" (Appellants' Motion for Reargument in the Court of Appeals of Maryland, par. 10). The motion prayed "leave to file a brief upon the Constitutional Question so this Court may decide it directly and squarely". On January 20, 1960, the Court of Appeals passed an Order ruling without comment "that the motion for reargument is denied."

On the foregoing facts, it is beyond doubt that the question sought to be reviewed is not now before this Court. The Maryland Court of Appeals, like most other appellate courts, has consistently and uniformly held that any contentions on behalf of an appellant not briefed in that Court may be deemed abandoned and need not be considered by the Court of Appeals.[1]

As was said in *John v. Paullin*, 231 U.S. 583, 585:

> "Without any doubt it rests with each state to prescribe the jurisdiction of its appeal courts, and the mode and time of invoking that jurisdiction, and the

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[1] *Vestry of Emmanuel Church of Balto. v. Safe Dep. & Tr. Co.*, 169 Md. 28, 37, 179 A. 64; *Taxes v. Aerial Products, Inc.*, 210 Md. 627, 644, 124 A. 2d 805; *Schneider v. Davis*, 194 Md. 316, 71 A. 2d 32; *Holler v. Lowery*, 175 Md. 149, 200 A. 353; *Wolfe v. State, use of Brown*, 173 Md. 103, 194 A. 832; *State v. United Rwys. & Elec. Co.*, 162 Md. 404, 159 A. 916; *Globe Slicing Mach. Co. v. Murphy*, 161 Md. 667, 158 A. 26; *May Co. v. Drury*, 160 Md. 143, 153 A. 61. See also Md. Rules of Procedure, Rule 831, formerly 39 of the Rules and Regulations respecting Appeals of the Court of Appeals of Maryland; *Schroeffer v. A. S. Abell Co.*, 4th C.C.A. 138 F. 2d 111, cert. den. 321 U.S. 763, rehearing den. 322 U.S. 770; 2 Maryland Law Encyclopedia, Appeal and Error, §402 pp. 312-13.

rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when federal rights are in controversy than when the case turns entirely upon questions of local or general law."

It is well and specifically established the Court of Appeals' denial without comment of appellants' motion for reargument, which attempted to raise a federal question not theretofore before the Court of Appeals, does not constitute a basis for review in this Court, it being presumed that the ruling on the motion was based on State procedural grounds, precluding Supreme Court review.[2]

The instant case affords even less basis for jurisdiction than the cases herein cited, since the opinion of the Court of Appeals expressly makes clear that the question now sought to be raised was not properly before it and the Appellants' motion "for reargument" in the Court of Appeals was in fact an express request to raise a constitutional question on appeal for the first time at that stage of the proceeding, which was denied.

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[2] *Cons. Turnpike Co. v. O. V. R. Co.*, 228 U.S. 326, 333-4; *Forbes v. State Council*, 216 U.S. 396, 399; *McCorquodale v. Texas*, 211 U.S. 432, 436-7. Cf. *Ill. Cent. R. Co. v. Ky.*, 218 U.S. 551; *Pa. R. Co. v. Ill. Brick Co.*, 297 U.S. 447, 462-3; *Erie Co. v. Purdy*, 185 U.S. 148; *Mut. Life Ins. Co. v. McGrew*, 188 U.S. 291, 309. See, also, *Bailey v. Anderson*, 326 U.S. 203, 206-7 (Supreme Court assumes where procedural deficiency exists in raising and preserving federal questions in State courts that State court silence on the federal question, unless it can be shown otherwise, is due to procedural deficiency, thus precluding Supreme Court review); *Stembridge v. Ga.*, 343 U.S. 541, 547-8 (where federal question raised for first time in petition for rehearing in intermediate appellate court; highest State court's refusal without opinion to hear case precludes Supreme Court review since Supreme Court is without jurisdiction "when the question of the existence of an adequate State ground is debatable" and action of highest State court might have been based on adequate State procedural ground).

It is clear beyond the slightest question that there is nothing for this Court to review.

II.

This Case Is Not Within The Appeal Jurisdiction Of This Court.

While the word "statute" in 28 U.S.C., Sec. 1257(2) is liberally construed, it includes only State action legislative in character, i.e., "rules having continuing force and intended to be observed and applied in the future". *King Mfg. Co. v. Augusta*, 277 U.S. 100, 104. The disciplinary action taken by the Real Estate Commission of Maryland is quasi-judicial in character and not reviewable on appeal. The cases cited at pages 2-3 of Appellants' Jurisdictional Statement to support the jurisdiction of this Court are inapplicable since they were: (a) decided prior to the 1925 amendment of the jurisdictional statutes of this Court which eliminated from the law the right to appeal "Where is drawn in question the validity of * * * an authority exercised under any State,[3] or (b) clearly legislative orders;[4] or (c) direct authority against appellants on the question of appeal jurisdiction in this case.[5]

Moreover, before the Real Estate Commission (Record E. 28, 687) and the Baltimore City Court (Record E. 513, 752), the Appellants' contention was not that any statute

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[3] *Myles Salt Co. v. Bd. of Comm'rs.*, 239 U.S. 478; *Gross v. U. S. Mtge. Co.*, 108 U.S. 477; *Parmelee v. Lawrence*, 11 Wall. 36; *Murdock v. City of Memphis*, 87 U.S. 590; *Peavey v. City of Des Moines*, 173 U.S. 193; *West Chic. Street Ry. Co. v. Chicago*, 201 U.S. 506.

[4] *Sultan Ry. Co. v. Dept. of Labor*, 277 U.S. 135 (order prescribing reporting system as part of State Workmen's Compensation Fund); *McCollum v. Bd. of Education*, 333 U.S. 203 (released time religious instruction program prescribed and established by Board of Education).

[5] *Ireland v. Woods*, 246 U.S. 323, which dismissed proceedings on writ of error, and *Norris v. Ala.*, 294 U.S. 587, which came up on certiorari.

of Maryland was void, but that the "complaint" was "an effort to deprive the respondents of their lawful rights as guaranteed by the Constitution of the United States" (Record E. 28). Appellants did not claim at any stage of the proceedings that application of the Maryland Real Estate License law to their particular circumstances would make the statute void under Federal law, but their federal claim, before it was abandoned in the Court of Appeals of Maryland, was that their federal rights prevented application of the statute to them. It is well settled under these circumstances that an adverse decision amounts to a denial of assertion of federal rights rather than a validation of the State statute, and consequently no appeal will lie.[6]

III.

This Appeal Does Not Present The Question Sought To Be Reviewed Or Any Substantial Federal Question And It Is Manifest That The Questions On Which The Decision Of This Case Depends Are So Unsubstantial As Not To Need Further Argument.

A. Introductory Statement

The Appellants' statement of the question sought to be reviewed does not deny that Appellants were proved guilty of the charges brought against them, nor can it in fact be fairly contended that the evidence does not fully support the findings of the Real Estate Commission in each case.

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[6] *Mergenthaler Linotype Co. v. Davis*, 251 U.S. 256, 259; *Charleston Fed. Savings & Loan Assoc. v. Alderson*, 324 U.S. 182, 185; *Jett Bros. Distilling Co. v. Carrollton*, 252 U.S. 1; Cf. *Ex Parte Bransford*, 310 U.S. 354, 361 (distinguishing between petition for Federal injunction against enforcement of State statute on the ground of unconstitutionality, requiring a three-judge court, and petition seeking injunction on ground of unconstitutionality of result obtained by use of State statute not attacked as unconstitutional, where three-judge court unnecessary).

1. *The 3800 Grantley Road Case*

This complaint filed by neighbors of the property in question charges that Appellants, real estate brokers and investors, posted and maintained from June 1958 continuously up to the filing of the complaint on September 5, 1958, a sign on 3800 Grantley Road, Baltimore City, which Appellants owned through a corporation, describing the property as "sold" by them, when actually it was not sold.

Approximately two weeks after the complaint was filed, one Joseph J. Carter, his wife and eight of his children, appeared from time to time on the property. The Appellants filed a sworn answer on September 29, 1958, claiming that the property had been sold to Carter on June 19, 1958, under a contract providing for a purchase price of $18,000, subject to $120 annual Maryland ground rent, a down payment of $3,000, and settlement within thirty days by land installment contract. The answer stated that "settlement has not yet taken place * * * and it is expected that settlement therefor will take place very shortly".

At the hearing before the Real Estate Commission several months later, Appellants produced a purported land installment contract with Carter, dated and allegedly executed September 19, 1959, or ten days prior to the filing of Appellants' answer. This contract, likewise for $18,000, subject to $120 annual ground rent, provided for weekly payments of $40 by the purchaser, exclusive of repairs and maintenance, and was claimed to have been the settlement called for by the earlier document.

The Appellants claimed that these two alleged contracts established the sale of the property and the truthfulness of their advertisement. The Real Estate Commission of Maryland found to the contrary on evidence which included the following:

(a) Carter was presented to the Commission by Appellants, who had known him for approximately a year prior to June 1958, as a responsible purchaser, with four children and a substantial income. Actually, Carter, 58 years of age, had been long employed full-time as a porter in an automobile agency, earning only $54 a week, with which to support eight children, including a four month old baby and several very young infants.

(b) Sergeant Violet Hill Whyte, a policewoman whose testimony the Real Estate Commission found "unimpeachable", testified that Carter's occupancy of the premises was not the normal occupancy of a dwelling — on several occasions she observed the entire family of ten occupying only the kitchenette in the dead of winter, with no oil, no heat, absolutely no food in the refrigerator, and no adequate clothing for the children. Neighbors found the Carters seldom on the premises and during their absence the wash stayed on the line for protracted periods without being taken down.

(c) Appellants knew it was impossible for Carter to purchase the Grantley Road property, having satisfied themselves by a credit check in July 1958, in connection with another property, that he was a "deadbeat".

(d) The Appellants, as brokers for another property, 3500 Ellamont Road, had prior to June 1958, tendered the owners a contract with Carter which bound Carter to a settlement date later than the July 19, 1958 settlement date provided in the alleged Grantley Road contracts; and Appellants, in Carter's name, were actively negotiating with the owners of the Ellamont Road property as late as July 24, 1958, when they requested an extension of settlement for Carter on Ellamont Road until August 20, 1958.

(e) The salesman for both the Ellamont Road and the Grantley Road properties, whose only compensation is by commissions which Appellants pay even if the buyer ultimately defaults, received no commissions whatever on the alleged Grantley Road sale, but was actually $250 out of pocket on both transactions, having been required by Appellants to put up $250 to make good a forfeiture of deposit on the Ellamont Road contract, without even a set-off for commissions on the alleged Grantley Road sale.

(f) Appellants, upset by the evidence as to the absence of commissions, made an elaborate explanation to the effect that checks were issued to the salesman sporadically and in round amounts as he needed money, with periodic balances struck from time to time. After one of the Appellants emphatically rejected a proffered opportunity to retract this explanation, there were introduced in evidence photostatic copies of the nine checks from the Appellants to the salesman for September, 1958, when the Grantley Road settlement allegedly took place. All but one of these checks were labeled "Commission" on a particular sale of property, whose address was stated. Each check was in the precise amount of the commissions payable and was dated promptly after the sale in question. There was, of course, no check for the Grantley Road property.

(g) While the "sold" sign was up, Carter, the alleged purchaser, mowed the lawn and did other odd jobs from time to time in evenings and weekends around the property. In conversation with neighbors, he referred to Appellants as his "boss" and did not know who had bought the house.

(h) In October, 1958, shortly after the alleged settlement for 3800 Grantley Road, Carter reported to his employer, the Brooks-Price Buick Co. in Baltimore, a change of address from 2531 Madison Avenue, Baltimore, his previous

residence, to 2028 North Payson Street, a small row house in another neighborhood in Baltimore.

(i) Late in August, 1958 [illegible] man posing as a prospective purchaser, was told by [illegible]nts' salesman and one of the Appellants themselve[illegible]ne Grantley Road property was not sold, and that [illegible] have a good reason for putting that (sign) there". The Appellants showed him the property and offered to let him move in immediately and about a week afterwards Appellants, through one of their salesmen, actively sought him out at his place of business in order to consummate the sale of the property by Appellants to him.

2. *The Listing Contract Case*

This complaint charged Appellants with use of an illegal form of listing agreement. Article 56, Section 224(o), Annotated Code of Maryland (1957 Ed.), includes among grounds for revocation or suspension of a real estate broker's license, "accepting a listing contract to sell property unless such contract provides for a definite termination date without notice from either party". The Appellants' standard listing contract provided that "the owner reserves the right to withdraw the property from said agent at any time after six months. But it is understood that this agreement is not revokable (sic) while any negotiations are pending for sale or exchange of the property". The complaint charged that this form of agreement violated the law in that there is no definite termination date without notice, but only a right to the owner to withdraw at any time after a named period, and further in that the right of withdrawal is conditioned on the absence of any "negotiations pending" for the sale of the property at the time of withdrawal.

Contrary to Appellants' statement at page 6 of the Jurisdictional Statement that their past practice demonstrated

that their listing agreement had always been used in a manner consistent with the requirement of Section 224 (o) of Article 56, *supra*, the Appellants' answer admitted that they "have always permitted property owners who wished to wishdraw property from their office to do so on written notice and the filing of an affidavit that they did not have any prospect in view to whom they expect to sell the property within a period of 30 days" (Record E. 685) — precisely the kind of restriction the statute is aimed at.

The Appellants' defense before the Commission was that they did not wilfully or deliberately violate the law. Appellant Shaw, however, admitted that he read the provisions of Article 56, Section 224 (o) in 1956 (E. 698-99). The former executive secretary of the Real Estate Commission testified that he had called the Appellant Bernstein and another real estate broker into this office in 1956, about a listing contract they used jointly (E. 712-13), which falsely implied that Appellants were members of the Real Estate Board of Baltimore. He said on this occasion he explained to Bernstein the law, passed in 1955, concerning a definite termination date without notice from either party and Bernstein said he would comply with it (E. 717). Bernstein, after considerable hedging (E. 725-727), admitted the conversation, and admitted that he knew about the change in the law while he was using the listing contract which was the subject of the instant complaint.

The Commission found that "the testimony of Mr. William G. Nicholson, the former Executive Secretary of this Commission, is persuasive in that he testified that he advised the Respondents of the requirement in the law that a listing contract must have a definite termination date without notice. The Commission, therefore, finds that

the Respondents had knowledge of the fact that their listing agreement did not comply with the provisions of the real estate law" (E. 741-42).

B. The Question Sought To Be Reviewed Is Not Involved In This Case

The two elements in Appellants' claim of federal rights are that the complaint was initiated by "private citizens whose primary motive is to prevent the sale of homes to Negroes in formerly all white neighborhoods", and that the "alleged evil" aimed at by the application of the statute is "insubstantial and technical as distinguished from one which is real and substantial". (Jurisdictional Statement, p. 3.) The Appellants now seek to base their case to this Court on the question of race bias and prejudice.

The record presents no such question. Early in the proceedings before the Real Estate Commission (E. 59), one of the members of the Commission clearly and concisely stated for the record the scope and purposes of the hearing as follows:

> "This is a hearing, as I understand it, for the purpose of determining whether or not this broker has violated the law in connection with the exercising of the rights of his license. We're not concerned with block-busting as so far defined. If there is anything fraudulent in the way a listing is procured or a sale has been executed, that's what we want to hear. We're not going to rule, we're not going to be concerned with whether a house was sold to white or colored; that's beside the point. The question is whether it's properly represented or properly sold or the mechanics of the transaction were properly handled, regardless of whether it was between two white people, two colored people or between a white and a colored person. So, now, let's not get off on racial issues or even try to bring them into the case because we're not going to rule on them."

In the 3800 Grantley Road case, the complainants were questioned as to their motives on cross examination by the Appellants' own counsel, who elicited all the evidence on this subject in their testimony. The testimony of Mrs. Kleiman is instructive:

> "I wasn't interested in whether the property was sold or not, in terms of to whom it had been sold. I was interested in whether or not the property had been falsely marked as sold. I have no objection to there being a negro family across the street from me."
> * * *
>
> "I thought that the intent of having a sign marked Manning-Shaw and sold was to give the impression that this house had been sold to a negro family, since this seemed at least to be the general impression people would get from such a sign, and I was concerned that there were many properties which were marked sold which were not sold, the impression would then spread throughout the neighborhood that this was not an integrated neighborhood, such as I was interested in living in, but that most of the neighborhood has been sold to negro families and I thought if I could in some way, bring up before the Board the fact that some of these signs were not really the result of a sale, but simply an attempt to indicate that there had been a sale, that this sort of thing could be stopped and then my aim, which is to keep Ashburton an integrated neighborhood, would then be fulfilled. It can't be if there are fifteen or so houses around in the area all marked sold when they are not really.* * *
>
> "I thought this example right across the street from me would be a place for me to intervene * * * this one was right here and we sat on our patio and could see the sign and the people coming and, apparently, no one moving in or doing anything then to the house that would indicated that they were planning to move in.* * *
>
> "Q. Now, aren't there colored people all around you in Ashburton? A. Yes.

"Q. And what do you think one or two more is going to do to you? A. I have no objection to one or two or five or ten more.

"Q. How many do you have objection to? A. I don't have any objection to the area making its normal moves in any direction. What I am objecting to are what I feel are attempts to arouse feelings of panic, that the whole neighborhood is going to turn, and I think false sold signs are part of an attempt of this nature.

"Q. Well, how many do you think should be allowed in your neighborhood, by you? A. How many negro families?

"Q. Yes. A. As many as move in under the natural and normal turn-over in an area.

"Q. What do you consider that to be? A. I don't know. When a house is sold, it will be sold to a negro family or to a white family, but when someone gets the impression that they do not want to live in an entirely negro neighborhood and look around and decide on the basis of sold signs, well, gee, all of these houses have been sold. I'm afraid that many more of the people than would under normal circumstances, obviously people move because a house is too small or because it's too large or because they want to live in another neighborhood, but I object to pushing people into moving out of an area because you're trying to convince them that it's about to turn entirely negro" (E. 68, 69, 70).

There was no attempt to elicit any evidence as to the motives of the Allendale-Lyndhurst Association in bringing their complaint.

The Appellants were not disciplined for anything technical or insubstantial. The State of Maryland has a substantial interest in enforcement of honesty and truthfulness of all of its real estate brokers and transactions.

Moreover, in the Grantley Road case, the Commission had before it not only the falsity of Appellants' advertisement over a substantial period of time, but also a flagrant and deliberate attempt by Appellants to conceal their conduct by false testimony before the Commission.

The Allendale-Lyndhurst case involves no racial features, and is a clear case of wilful, continued and substantial violation of the uniform and general policy of the State of Maryland regarding listing forms as announced by its Legislature in 1955.

C. There Is No Substantial Federal Question In This Case.

Even if this appeal presented the question sought to be reviewed, the question is not substantial. The question as presented by the Appellants does not contend that the Real Estate Commission or courts of Maryland were biased, or themselves guilty of any ulterior purpose of denial of due process or equal protection. The Appellants' counsel, at the conclusion of his argument before the Commission, in fact, expressed appreciation of the way in which the Commission had "listened to all the testimony in this case and the fair and impartial way you have permitted us to put in everything we thought was important" (E. 783).

N.A.A.C.P. v. Alabama, 357 U.S. 449, is totally inapplicable. In that case the State itself was using a statute beyond its fair intendment as a pretext to achieve an unconstitutional purpose, whereas in the instant case the Appellants' sole challenge is based on the alleged motives of the private complainants.

Even if complainants' motives were not misstated by Appellants, they are irrelevant here where the agencies of the State have proceeded fairly in vindication of a

general statutory interest of the State itself in the honesty and fairness of all real estate brokers and transactions. Appellants concede that "It is of course correct that where a State statute is aimed at a substantial evil which the State has an interest in preventing, it is unimportant that the party who seeks the protection of the statute has ulterior motives" (Jurisdictional Statement, p. 10).

The Appellants are obviously claiming special exemption from Maryland's general statutory requirements of honesty and truthfulness on the part of real estate brokers, and their claim rests on the sole ground that they specialize in sales to Negroes. It is perfectly clear that Appellants' undoubted right to sell any property they wish to any person they wish does not give them a special license to violate the law regarding truthful conduct and advertising. Appellants are entitled to and were accorded equal protection of the laws without regard to race. They are not entitled to special exemption from the law on account of the race of their customers.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal be dismissed or the decision of the Court of Appeals of Maryland be affirmed, the mandate to issue forthwith.

Respectfully submitted,

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